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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/600,814	06/20/2003	Albert D. Johns	2421 (GP-02-5)	9255
40256	7590	10/11/2006	EXAMINER	
FERRELLS, PLLC P. O. BOX 312 CLIFTON, VA 20124-1706			ELKINS, GARY E	
			ART UNIT	PAPER NUMBER
			3782	

DATE MAILED: 10/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Continuation of Disposition of Claims: Claims rejected are 3,6,7,9-19,22-24,26,27,32,49,51-61,63-67,70-72,74-78,80-90,96-133,159,160 and 162.

## Office Action Summary

Application No.

10/600,814

Applicant(s)

JOHNS ET AL.

Examiner

Gary E. Elkins

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 10 July 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-188 is/are pending in the application.
- 4a) Of the above claim(s) 33-48, 136-155 and 166-188 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1, 2, 4, 5, 8, 20, 21, 28-31, 50, 62, 68, 69, 73, 79, 91, 134, 135, 156-158, 161 and 163-165 is/are allowed.
- 6) ☒ Claim(s) See Continuation Sheet is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 20031103
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. Claims 3, 6, 7, 9-19, 22-24, 26, 27, 32, 49, 51-61, 63-67, 70-72, 74-78, 80-90, 100, 101, 103-106, 108-110, 115-120, 122-128, 130-133, 159, 160 and 162 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims listed above are unduly multiplied insofar as they are repetitious with the result that they confuse rather than clarify the invention for which Applicant is seeking a patent. (See MPEP 2173.05(n) and 37 CFR 1.75(b)). The election of claims 1, 2, 4, 5, 8, 20, 21, 25, 28-31, 50, 62, 68, 69, 73, 79, 91, 96-99, 102, 107, 111-114, 121, 129, 134, 135, 156-158, 161 and 163-165 for prosecution in the response filed 10 July 2006 is acknowledged. An action on the merits of these claims follows.
2. Claims 96-99, 102, 107, 111-114, 121 and 129 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 96, line 10, "the containers" lacks antecedent basis in the claims.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
4. Claim 96 is rejected under 35 U.S.C. 102(b) as being anticipated by Tranfaglia et al. Tranfaglia et al discloses a servingware container including a planar bottom and two annular

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transition portions on opposite sides of a sidewall portion. The ratio of the vertical drop of the flange to the characteristic diameter as depicted in Tranfaglia et al is much greater than about .01 and the outer edge terminates below the height of the container. Tranfaglia further discloses a peripheral tab extending outwardly over a distance much greater than at least about .02 times the characteristic diameter and is located at a height below the height of the container as depicted in fig. 5.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 102 and 107 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tranfaglia. With respect to claim 102, the patent to Tranfaglia discloses all structure of the claimed container except formation of the outer flange portion with a radius of curvature between about .0175 and .1 times the characteristic diameter. It would have been an obvious matter of design choice to make the arcuate outer flange portion of Tranfaglia with a radius of curvature size of between .0175 and .1 times the characteristic diameter as a mere selection of one size over another. No functional distinction can be seen nor has any been asserted by Applicant with respect to the claimed size over the size(s) shown in the prior art. A mere change in the size of a component has generally been held unpatentable. See *In re Rose*, 105 USPQ 237 (CCPA 1955). With respect to claim 107, the patent to Tranfaglia discloses all structure of the claimed container except formation of the ratio of the flange outer drop to the diameter greater

than about .013. It would have been an obvious matter of design choice to make the ratio as set forth in the claim as a mere selection of radius of curvature desired. No functional distinction is seen in the claimed ratio as compared to that shown in Tranfaglia nor has any such functional distinction been asserted by Applicant. A mere change in the size of a component has generally been held unpatentable. See *In re Rose*, 105 USPQ 237 (CCPA 1955).

7. Claim 97 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tranfaglia in view of Marx et al '491. Tranfaglia discloses all structure of the claimed container except formation of the container from a press formed blank. Marx et al '491 teaches that it is known to make a bowl from a press formed blank. It would have been obvious to make the bowl in Tranfaglia as taught by Marx et al '491 to provide a strong, grease resistant container. Press formed bowls are well known in this art.

#### ***Allowable Subject Matter***

8. Claims 1, 2, 4, 5, 8, 20, 21, 28-31, 50, 62, 68, 69, 73, 79, 91, 134, 135, 156-158, 161 and 163-165 are allowed.

9. Claims 98, 99, 111-114, 121 and 129 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

#### ***Response to Arguments***

10. Applicant's arguments filed 10 July 2006 have been fully considered but they are not persuasive.

The remarks assert that MPEP 2173.05(n) does not apply to the claims of this application since "An applicant should be allowed to determine the necessary number and scope of his

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claims, provided he pays the required fees and otherwise complies with the statute". In response, MPEP 2173.05(n) provides rejection of claims which are multiplied to the point where the claims do not particularly point out and distinctly claim the subject matter and requires a selection of a reasonable number of claims for examination. Whether an Applicant pays money to submit such claims or not is not seen to be a determining factor in whether such claims should or should not be rejected as unduly multiplied. The issue is one of clarity as opposed to how much money an Applicant is willing to pay. The remarks assert that limiting the claims to 40 is arbitrary. It is believed that 40 is a reasonable number of claims to adequately define a paperboard plate/bowl with edge tabs. However, if Applicant believes that additional claims are warranted and are not unduly repetitive in nature, further consideration will be made. The remarks further assert that a requisite showing has not been made with respect to the rejection. In response, the following assessment is made. 127 claims were elected with respect to the paperboard plate/bowl. At least 41 of those claims define various dimensional relationships of the tabs. Another at least 24 define various dimensional relationships of the plate or bowl. Many of these claims are identical, but submitted in differing combinations of the same elements. For example, the only difference between independent claim 50 and claim 1 is that claim 50 recites the container as press formed from a paperboard blank.

### ***Conclusion***

The remaining cited prior art is illustrative of the general state of the art.

In order to reduce pendency and avoid potential delays, Technology Center 3700 is encouraging FAXing of responses in Office Actions to (571)273-8300. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a

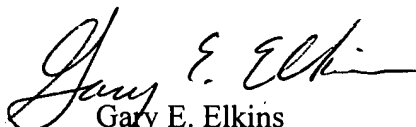
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fee by Applicants who authorize charges to a PTO deposit account. Please identify the Examiner and art unit at the top of your cover sheet.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. Also, copies of an office action or other file information may be obtained from the Private PAIR system. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions regarding access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry concerning this communication or earlier communication from the Examiner should be directed to Gary Elkins at telephone number (571)272-4537. The Examiner can normally be reached Monday through Thursday.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Mr. Nathan Newhouse can be reached at (571)272-4544.

  
Gary E. Elkins  
Primary Examiner  
Art Unit 3727

gee  
02 October 2006